

People First Language Update: Supplement [1(b), 2(b), 4, 8(a), 9(f) – 9(k)]

1.(b)

"§ 35A-1101. Definitions.

When used in this Subchapter:

- (1) "Autism" means a physical disorder of the brain which causes disturbances in the developmental rate of physical, social, and language skills; abnormal responses to sensations; absence of or delay in speech or language; or abnormal ways of relating to people, objects, and events. Autism occurs sometimes by itself and sometimes in conjunction with other brain-functioning disorders.
- (2) "Cerebral palsy" means a muscle dysfunction, characterized by impairment of movement, often combined with speech impairment, and caused by abnormality of or damage to the brain.
- (3) "Clerk" means the clerk of superior court.
- (4) "Designated agency" means the State or local human services agency designated by the clerk in the clerk's order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional, or area mental health, ~~mental retardation,~~ intellectual disability, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.
- (5) "Epilepsy" means a group of neurological conditions characterized by abnormal electrical-chemical discharge in the brain. This discharge is

1 manifested in various forms of physical activity called seizures, which range
2 from momentary lapses of consciousness to convulsive movements.

3 (6) "Guardian ad litem" means a guardian appointed pursuant to G.S. 1A-1,
4 Rule 17, Rules of Civil Procedure.

5 (7) "Incompetent adult" means an adult or emancipated minor who lacks
6 sufficient capacity to manage the adult's own affairs or to make or
7 communicate important decisions concerning the adult's person, family, or
8 property whether the lack of capacity is due to mental illness, ~~mental~~
9 ~~retardation~~, intellectual disability, epilepsy, cerebral palsy, autism, inebriety,
10 senility, disease, injury, or similar cause or condition.

11 (8) "Incompetent child" means a minor who is at least 17 1/2 years of age and
12 who, other than by reason of minority, lacks sufficient capacity to make or
13 communicate important decisions concerning the child's person, family, or
14 property whether the lack of capacity is due to mental illness, ~~mental~~
15 ~~retardation~~, intellectual disability, epilepsy, cerebral palsy, autism, inebriety,
16 disease, injury, or similar cause or condition.

17 (9) "Indigent" means unable to pay for legal representation and other necessary
18 expenses of a proceeding brought under this Subchapter.

19 (10) "Inebriety" means the habitual use of alcohol or drugs rendering a person
20 incompetent to transact ordinary business concerning the person's estate,
21 dangerous to person or property, cruel and intolerable to family, or unable to
22 provide for family.

23 (10a) "Intellectual disability" means significantly subaverage general intellectual
24 functioning existing concurrently with deficits in adaptive behavior and
25 manifested before age 22.

1 (11) "Interim guardian" means a guardian, appointed prior to adjudication of
2 incompetence and for a temporary period, for a person who requires
3 immediate intervention to address conditions that constitute imminent or
4 foreseeable risk of harm to the person's physical well-being or to the person's
5 estate.

6 (12) "Mental illness" means an illness that so lessens the capacity of a person to
7 use self-control, judgment, and discretion in the conduct of the person's
8 affairs and social relations as to make it necessary or advisable for the
9 person to be under treatment, care, supervision, guidance, or control. The
10 term "mental illness" encompasses "mental disease", "mental disorder",
11 ~~"lunacy"~~, "unsoundness of mind", and "insanity".

12 ~~(13) "Mental retardation" means significantly subaverage general intellectual~~
13 ~~functioning existing concurrently with deficits in adaptive behavior and~~
14 ~~manifested before age 22.~~

15 (14) "Multidisciplinary evaluation" means an evaluation that contains current
16 medical, psychological, and social work evaluations as directed by the clerk
17 and that may include current evaluations by professionals in other
18 disciplines, including without limitation education, vocational rehabilitation,
19 occupational therapy, vocational therapy, psychiatry, speech-and-hearing,
20 and communications disorders. The evaluation is current if made not more
21 than one year from the date on which it is presented to or considered by the
22 court. The evaluation shall set forth the nature and extent of the disability
23 and recommend a guardianship plan and program.

24 (15) "Respondent" means a person who is alleged to be incompetent in a
25 proceeding under this Subchapter.

1 (16) "Treatment facility" has the same meaning as "facility" in G.S. 122C-3(14),
2 and includes group homes, halfway houses, and other community-based
3 residential facilities.

4 (17) "Ward" means a person who has been adjudicated incompetent or an adult or
5 minor for whom a guardian has been appointed by a court of competent
6 jurisdiction."

1 **2.(b)**

2 **"§ 7B-2502. Evaluation and treatment of undisciplined and delinquent juveniles.**

3 (a) In any case, the court may order that the juvenile be examined by a physician,
4 psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine
5 the needs of the juvenile. In the case of a juvenile adjudicated delinquent for committing an
6 offense that involves the possession, use, sale, or delivery of alcohol or a controlled substance,
7 the court shall require the juvenile to be tested for the use of controlled substances or alcohol
8 within 30 days of the adjudication. In the case of any juvenile adjudicated delinquent, the court
9 may, if it deems it necessary, require the juvenile to be tested for the use of controlled
10 substances or alcohol. The results of these initial tests conducted pursuant to this subsection
11 shall be used for evaluation and treatment purposes only. In placing a juvenile in out-of-home
12 care under this section, the court shall also consider whether it is in the juvenile's best interest
13 to remain in the juvenile's community of residence.

14 (b) Upon completion of the examination, the court shall conduct a hearing to determine
15 whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other
16 evaluation or treatment and who should pay the cost of the evaluation or treatment. The county
17 manager, or any other person who is designated by the chair of the board of county
18 commissioners, of the county of the juvenile's residence shall be notified of the hearing, and
19 allowed to be heard. If the court finds the juvenile to be in need of medical, surgical,
20 psychiatric, psychological, or other evaluation or treatment, the court shall permit the parent,
21 guardian, custodian, or other responsible persons to arrange for evaluation or treatment. If the
22 parent, guardian, or custodian declines or is unable to make necessary arrangements, the court
23 may order the needed evaluation or treatment, surgery, or care, and the court may order the
24 parent to pay the cost of the care pursuant to Article 27 of this Chapter. If the court finds the
25 parent is unable to pay the cost of evaluation or treatment, the court shall order the county to
26 arrange for evaluation or treatment of the juvenile and to pay for the cost of the evaluation or

1 treatment. The county department of social services shall recommend the facility that will
2 provide the juvenile with evaluation or treatment.

3 (c) If the court believes, or if there is evidence presented to the effect that the juvenile is
4 ~~mentally ill or is developmentally disabled,~~ has a mental illness or a developmental disability,
5 the court shall refer the juvenile to the area mental health, developmental disabilities, and
6 substance abuse services director for appropriate action. A juvenile shall not be committed
7 directly to a State hospital or ~~mental retardation center;~~ center for individuals with an
8 intellectual disability; and orders purporting to commit a juvenile directly to a State hospital or
9 ~~mental retardation center~~ center for individuals with an intellectual disability, except for an
10 examination to determine capacity to ~~proceed~~ proceed, shall be void and of no effect. The area
11 mental health, developmental disabilities, and substance abuse director shall be responsible for
12 arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the
13 juvenile's needs. If institutionalization is determined to be the best service for the juvenile,
14 admission shall be with the voluntary consent of the parent, guardian, or custodian. If the
15 parent, guardian, or custodian refuses to consent to a ~~mental hospital or retardation center~~
16 ~~admission~~ admission to a mental hospital or center for individuals with an intellectual disability
17 after such institutionalization is recommended by the area mental health, developmental
18 disabilities, and substance abuse director, the signature and consent of the court may be
19 substituted for that purpose. In all cases in which a regional mental hospital refuses admission
20 to a juvenile referred for admission by the court and an area mental health, developmental
21 disabilities, and substance abuse director or discharges a juvenile previously admitted on court
22 referral prior to completion of the juvenile's treatment, the hospital shall submit to the court a
23 written report setting out the reasons for denial of admission or discharge and setting out the
24 juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a
25 statement as to the location of any facility known to have a treatment program for the juvenile
26 in question."

1 **4.(a)**

2 **"§ 14-27.20. Definitions.**

3 As used in this Article, unless the context requires otherwise:

➡ 4 (1) "Mentally disabled" means (i) a victim who ~~suffers from mental retardation,~~
➡ 5 has an intellectual disability, or (ii) a victim who ~~suffers from~~ has a mental
6 disorder, either of which temporarily or permanently renders the victim
7 substantially incapable of appraising the nature of his or her conduct, or of
8 resisting the act of vaginal intercourse or a sexual act, or of communicating
9 unwillingness to submit to the act of vaginal intercourse or a sexual act.

10 (2) "Mentally incapacitated" means a victim who due to any act committed upon
11 the victim is rendered substantially incapable of either appraising the nature
12 of his or her conduct, or resisting the act of vaginal intercourse or a sexual
13 act.

14 (3) "Physically helpless" means (i) a victim who is unconscious; or (ii) a victim
15 who is physically unable to resist an act of vaginal intercourse or a sexual act
16 or communicate unwillingness to submit to an act of vaginal intercourse or a
17 sexual act.

18 (4) "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but
19 does not include vaginal intercourse. Sexual act also means the penetration,
20 however slight, by any object into the genital or anal opening of another
➡ 21 person's ~~body: provided, that it shall be~~ body. It is an affirmative defense
22 that the penetration was for accepted medical purposes.

23 (5) "Sexual contact" means (i) touching the sexual organ, anus, breast, groin, or
24 buttocks of any person, (ii) a person touching another person with their own
25 sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating,
26 emitting, or placing semen, urine, or feces upon any part of another person.

1 (6) "Touching" as used in subdivision (5) of this section, means physical contact
2 with another person, whether accomplished directly, through the clothing of
3 the person committing the offense, or through the clothing of the victim."

1 4.(b)

2 "§ 14-32.1. Assaults on ~~handicapped persons;~~ individuals with a disability; punishments.

3 (a) For purposes of this section, a ~~"handicapped person" is a person~~ "individual with
4 a disability" is an individual who has ~~has~~ one or more of the following that would substantially
5 impair the ability to defend oneself:

6 (1) A physical or mental disability, such as a decreased use of arms or legs,
7 blindness, deafness, ~~mental retardation~~ intellectual disability, or mental
8 ~~illness; or~~ illness.

9 (2) ~~Infirmity~~ An infirmity.
10 ~~which would substantially impair that person's ability to defend himself.~~

11 (b) through (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 31,
12 effective October 1, 1994.

13 (e) Unless ~~his~~ the conduct is covered under some other provision of law providing
14 greater punishment, any person who commits any aggravated assault or assault and battery on a
15 ~~handicapped person~~ an individual with a disability is guilty of a Class F felony. A person
16 commits an aggravated assault or assault and battery upon a ~~handicapped person~~ an individual
17 with a disability if, in the course of the assault or assault and battery, that ~~person~~ person does
18 any of the following:

19 (1) Uses a deadly weapon or other means of force likely to inflict serious injury
20 or serious damage to a ~~handicapped person;~~ or an individual with a disability.

21 (2) Inflicts serious injury or serious damage to a ~~handicapped person;~~ or an
22 individual with a disability.

23 (3) Intends to kill a ~~handicapped person~~ an individual with a disability.

24 (f) Any person who commits a simple assault or battery upon a ~~handicapped person~~ an
25 individual with a disability is guilty of a Class A1 misdemeanor."

1 **4.(c)**

2 **"§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

3 (a) Unless a DNA sample has previously been obtained by lawful process and the DNA
4 record stored in the State DNA Database, and that record and sample has not been expunged
5 pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained
6 from any person who is arrested for committing an offense described in subsection (f) or (g) of
7 this section.

8 (b) The arresting law enforcement officer shall obtain, or cause to be obtained, a DNA
9 sample from an arrested person at the time of arrest, or when fingerprinted. However, if the
10 person is arrested without a warrant, then the DNA sample shall not be taken until a probable
11 cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be
12 by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA
13 blood sample is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The
14 arresting law enforcement officer shall forward, or cause to be forwarded, the DNA sample to
15 the appropriate laboratory for DNA analysis and testing.

16 (c) At the time a DNA sample is taken pursuant to this section, the person obtaining the
17 DNA sample shall record, on a form promulgated by the Crime Laboratory, the date and time
18 the sample was taken, the name of the person taking the DNA sample, the name and address of
19 the person from whom the sample was taken, and the offense or offenses for which the person
20 was arrested. This record shall be maintained in the case file and shall be available to the
21 prosecuting district attorney for the purpose of completing the requirements of subsection (j) of
22 this section.

23 (d) After taking a DNA sample from an arrested person required to provide a DNA
24 sample pursuant to this section, the person taking the DNA sample shall provide the arrested
25 person with a written notice of the procedures for seeking an expunction of the DNA sample

pursuant to subsections (h), (i), (j), (k), and (l) of this section. The Department of Justice shall provide the written notice required by this subsection.

(e) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the Crime Laboratory in the State DNA Databank pursuant to this Article.

➡ (f) This section ~~shall apply~~ applies to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-16.6(b), Assault with a deadly weapon on executive, legislative, or court officer; and G.S. 14-16.6(c), Assault inflicting serious bodily injury on executive, legislative, or court officer.

(1a) G.S. 14-17, First and Second Degree Murder.

(2) G.S. 14-18, Manslaughter.

(2a) Any felony offense in Article 6A, Unborn Victims.

(3) Any offense in Article 7B, Rape and Other Sex Offenses.

(4) G.S. 14-28, Malicious castration; G.S. 14-29, Castration or other maiming without malice aforethought; G.S. 14-30, Malicious maiming; G.S. 14-30.1, Malicious throwing of corrosive acid or alkali; G.S. 14-31, Maliciously assaulting in a secret manner; G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; G.S. 14-32.1(e), Aggravated assault or assault and battery on ~~handicapped person; an~~ individual with a disability; G.S. 14-32.2(a) when punishable pursuant to G.S. 14-32.2(b)(1), Patient abuse and neglect, intentional conduct proximately causes death; G.S. 14-32.3(a), Domestic abuse of disabled or elder adults resulting in injury; G.S. 14-32.4, Assault inflicting serious bodily injury or injury by strangulation; G.S. 14-33.2, Habitual misdemeanor assault; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into

occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; G.S. 14-34.7, Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.9, Discharging a firearm from within an enclosure; and G.S. 14-34.10, Discharge firearm within enclosure to incite fear.

(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.

(5a) Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.


(6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of dwelling house burglary; G.S. 14-54(a1), Breaking or entering buildings with intent to terrorize or injure; G.S. 14-54.1, Breaking or entering a place of religious worship; and G.S. 14-57, Burglary with explosives.

(7) Any offense in Article 15, Arson.

(8) G.S. 14-87, Armed robbery; Common law robbery punishable pursuant to G.S. 14-87.1; and G.S. 14-88, Train robbery.

(8a) G.S. 14-163.1(a1), Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal willfully killing the animal.

- 1 (9) Any offense which would require the person to register under the provisions
2 of Article 27A of Chapter 14 of the General Statutes, Sex Offender and
3 Public Protection Registration Programs.
- 4 (10) G.S. 14-196.3, Cyberstalking.
- 5 (10a) G.S. 14-202, Secretly peeping into room occupied by another person.
- 6 (10b) G.S. 14-258.2, Possession of dangerous weapon in prison resulting in bodily
7 injury or escape; G.S. 14-258.3, Taking of hostage, etc., by prisoner; and
8 G.S. 14-258.4, Malicious conduct by prisoner.
- 9 (11) G.S. 14-277.3A, Stalking.
- 10 (12) G.S. 14-288.9, Assault on emergency personnel with a dangerous weapon or
11 substance.
- 12 (13) G.S. 14-288.21, Unlawful manufacture, assembly, possession, storage,
13 transportation, sale, purchase, delivery, or acquisition of a nuclear,
14 biological, or chemical weapon of mass destruction; exceptions; and G.S.
15 14-288.22, Unlawful use of a nuclear, biological, or chemical weapon of
16 mass destruction.
- 17 (14) G.S. 14-318.4(a), Child abuse inflicting serious injury and G.S.
18 14-318.4(a3), Child abuse inflicting serious bodily injury.
- 19 (15) G.S. 14-360(a1), Cruelty to animals; maliciously kill by intentional
20 deprivation of necessary sustenance; and G.S. 14-360(b), Cruelty to animals;
21 maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill.
- 22 (16) G.S. 14-401.22(e), Attempt to conceal evidence of non-natural death by
23 dismembering or destroying remains.

 24 (g) This section ~~shall also apply~~ also applies to a person arrested for attempting,
25 solicitation of another to commit, conspiracy to commit, or aiding and abetting another to
26 commit, any of the violations included in subsection (f) of this section.

1 (h) The Crime Laboratory shall remove a person's DNA record, and destroy any DNA
2 biological samples that may have been retained, from the State DNA Database and DNA
3 Databank if both of the following are determined pursuant to subsection (i) of this section:

4 (1) As to the charge, or all charges, resulting from the arrest upon which a DNA
5 sample is required under this section, a court or the district attorney has
6 taken action resulting in any one of the following:

- 7 a. The charge has been dismissed.
- 8 b. The person has been acquitted of the charge.
- 9 c. The defendant is convicted of a lesser-included misdemeanor offense
10 that is not an offense included in subsection (f) or (g) of this section.
- 11 d. No charge was filed within the statute of limitations, if any.
- 12 e. No conviction has occurred, at least three years has passed since the
13 date of arrest, and no active prosecution is occurring.

14 (2) The person's DNA record is not required to be in the State DNA Database
15 under some other provision of law, or is not required to be in the State DNA
16 Database based upon an offense from a different transaction or occurrence
17 from the one which was the basis for the person's arrest.

18 (i) Prior to June 1, 2012, upon the occurrence of one of the events in sub-subdivision d.
19 or e. of subdivision (1) of subsection (h) of this section, the defendant or the defendant's
20 counsel shall provide the prosecuting district attorney with a signed request form, promulgated
21 by the Administrative Office of the Courts, requesting that the defendant's DNA record be
22 expunged from the DNA Database and that any biological samples in the DNA Databank be
23 destroyed. On or after June 1, 2012, upon the occurrence of one of the events in
24 sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section, no request form
25 shall be required and the prosecuting district attorney shall initiate the procedure provided in
26 subsection (j) of this section.

1 (j) Prior to June 1, 2012, within 30 days of the receipt of the form required by
2 subsection (i) of this section or the occurrence of one of the events in sub-subdivision a., b., or
3 c. of subdivision (1) of subsection (h) of this section; and on or after June 1, 2012, within 30
4 days of the occurrence of one of the events in subdivision (1) of subsection (h) of this section,
5 the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this
6 section, and if so, shall:

7 (1) Verify and indicate the facts of the qualifying event on a verification form
8 promulgated by the Administrative Office of the Courts.

9 (2) Include the last known address of the defendant, as reflected in the court
10 files, on the verification form.

11 (3) Sign the verification form or, if the defendant was acquitted or the charges
12 were dismissed by the court, obtain the signature of a judge.

13 (4) Transmit the verification form to the Crime Laboratory.

14 (k) Within 90 days of receipt of the verification form, the Crime Laboratory shall:

15 (1) Determine whether the requirement of subdivision (2) of subsection (h) of
16 this section has been met.

17 (2) If the requirement has been met, remove the defendant's DNA record and
18 samples as required by subsection (h) of this section.

19 (3) Mail to the defendant, at the address specified in the verification form, a
20 notice doing either of the following:

21 a. Documenting expunction of the DNA record and destruction of the
22 DNA sample.

23 b. Notifying the defendant that the DNA record and sample do not
24 qualify for expunction pursuant to subsection (h) of this section.

1 (l) The defendant may file a motion with the court to review the denial of the
2 defendant's request or the failure of either the district attorney or the Crime Laboratory to act
3 within the prescribed time period.

4 (m) Any identification, warrant, probable cause to arrest, or arrest based upon a database
5 match of the defendant's DNA sample which occurs after the expiration of the statutory periods
6 prescribed for expunction of the defendant's DNA sample, shall be invalid and inadmissible in
7 the prosecution of the defendant for any criminal offense.

8 (n) Notwithstanding subsection (h) of this section, the Crime Laboratory is not required
9 to destroy or remove an item of physical evidence obtained from a sample if evidence relating
10 to another person would thereby be destroyed.

11 (o) The Crime Laboratory shall adopt procedures to comply with this section."

12 *[Staff Note: This amendment is a conforming amendment to the changes made to G.S. 14-*
13 *32.1.]*
14

1 **4.(d)**

2 **"§ 15A-266.4. DNA sample required for DNA analysis upon conviction or finding of not**
3 **guilty by reason of insanity.**

4 (a) Unless a DNA sample has previously been obtained by lawful process and a record
5 stored in the State DNA Database, and that record and sample have not been expunged
6 pursuant to any provision of law, a person:

7 (1) Who is convicted of any of the crimes listed in subsection (b) of this section
8 or who is found not guilty of any of these crimes by reason of insanity and
9 committed to a mental health facility in accordance with G.S. 15A-1321,
10 shall provide a DNA sample upon intake to jail, prison, or the mental health
11 facility. In addition, every person convicted of any of these crimes, but who
12 is not sentenced to a term of confinement, shall provide a DNA sample as a
13 condition of the sentence.

14 (2) Who has been convicted and incarcerated as a result of a conviction of one
15 or more of the crimes listed in subsection (b) of this section, or who was
16 found not guilty of any of these crimes by reason of insanity and committed
17 to a mental health facility in accordance with G.S. 15A-1321, shall provide a
18 DNA sample before parole or release from the penal system or before
19 release from the mental health facility.

20 (b) Crimes covered by this Article include all of the following:

21 (1) All felonies.

22 (2) G.S. 14-32.1 – Assaults on ~~handicapped persons~~ individuals with a
23 disability.

24 (3) Former G.S. 14-277.3 – Stalking.

25 (4) Repealed by Session Laws 2010-94, s. 5, effective February 1, 2011.

26 (5) All offenses described in G.S. 15A-266.3A."

1 *[Staff Note: This amendment is a conforming amendment to the changes made to G.S. 14-*
2 *32.1.]*
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1 **4.(e)**

2 **"§ 14-32.2. Patient abuse and neglect; punishments.**

➡ 3 (a) It ~~shall be~~ is unlawful for any person to physically abuse a patient of a health care
4 facility or a resident of a residential care facility, when the abuse results in death or bodily
5 injury.

6 (b) Unless the conduct is prohibited by some other provision of law providing for
7 greater punishment:

➡ 8 (1) A violation of subsection (a) ~~above of this section~~ is a Class C felony where
9 intentional conduct proximately causes the death of the patient or resident;

➡ 10 (2) A violation of subsection (a) ~~above of this section~~ is a Class E felony where
11 culpably negligent conduct proximately causes the death of the patient or
12 resident;

➡ 13 (3) A violation of subsection (a) ~~above of this section~~ is a Class F felony where
14 such conduct is willful or culpably negligent and proximately causes serious
15 bodily injury to the patient or resident;

➡ 16 (4) A violation of subsection (a) of this section is a Class H felony where such
17 conduct evinces a pattern of conduct and the conduct is willful or culpably
18 negligent and proximately causes bodily injury to a patient or resident.

➡ 19 (c) ~~—"Health Care Facility" shall include hospitals, skilled nursing facilities, intermediate~~
20 ~~care facilities, intermediate care facilities for the mentally retarded, psychiatric facilities,~~
21 ~~rehabilitation facilities, kidney disease treatment centers, home health agencies, ambulatory~~
22 ~~surgical facilities, and any other health care related facility whether publicly or privately~~
23 ~~owned.~~

24 (c1) ~~—"Residential Care Facility" shall include adult care homes and any other residential~~
25 ~~care related facility whether publicly or privately owned.~~

(d) ~~"Person" shall include any natural person, association, corporation, partnership, or other individual or entity.~~

(e) ~~"Culpably negligent" shall mean conduct of a willful, gross and flagrant character, evincing reckless disregard of human life.~~

(e1) ~~"Abuse" means the willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law designed for the health or welfare of a patient or resident.~~

(f) Any defense which may arise under G.S. 90-321(h) or G.S. 90-322(d) pursuant to compliance with Article 23 of Chapter 90 of the General Statutes ~~shall be~~ is fully applicable to any prosecution initiated under this section.

(g) Criminal process for a violation of this section may be issued only upon the request of a ~~District Attorney~~ district attorney.

(h) The provisions of this section ~~shall~~ do not supersede any other applicable statutory or common law offenses.

(i) The following definitions apply in this section:

(1) Abuse. – The willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law designed for the health or welfare of a patient or resident.

(2) Culpably negligent. – Conduct of a willful, gross, and flagrant character, evincing reckless disregard of human life.

(3) Health care facility. – Includes hospitals, skilled nursing facilities, intermediate care facilities, intermediate care facilities for individuals with an intellectual disability, psychiatric facilities, rehabilitation facilities, kidney disease treatment centers, home health agencies, ambulatory surgical facilities, and any other health care related facility whether publicly or privately owned.

1 (4) Person. – Includes any natural person, association, corporation, partnership,
2 or other individual or entity.

3 (5) Residential care facility. – Includes adult care homes and any other
4 residential care related facility whether publicly or privately owned."

1 **4.(f)** –[***The amendment to G.S. 90-106(a) expires January 1, 2020, the amendments to G.S.
2 90-106(a1) become effective January 1, 2020. All other amendments are effective when they
3 become law.***]
4

5 **"§ 90-106. Prescriptions and labeling.**

6 (a) **(Effective until January 1, 2020)** Except when dispensed directly by a practitioner,
7 other than a pharmacist, to an ultimate user, no controlled substance included in Schedule II of
8 this Article ~~may~~shall be dispensed without the written prescription of a practitioner. No
9 Schedule II substance shall be dispensed pursuant to a written prescription more than six
10 months after the date it was prescribed.

11 (a) **(Effective January 1, 2020)** No Schedule II substance shall be dispensed pursuant
12 to a written or electronic prescription more than six months after the date it was prescribed.

13 (a1) **(Effective January 1, 2020)** Electronic Prescription Required; Exceptions. – Unless
14 otherwise exempted by this subsection, a practitioner shall electronically prescribe all targeted
15 controlled substances. This subsection does not apply to prescriptions for targeted controlled
16 substances issued by any of the following:

17 (1) A practitioner, other than a pharmacist, who dispenses directly to an ultimate
18 user.

19 (2) A practitioner who orders a controlled substance to be administered in a
20 hospital, nursing home, hospice facility, outpatient dialysis facility, or
21 residential care facility, as defined in G.S. 14-32.2.

22 (3) A practitioner who experiences temporary technological or electrical failure
23 or other extenuating circumstance that prevents the prescription from being
24 transmitted ~~electronically; provided, however, that the practitioner~~
25 ~~documents electronically. The practitioner, however, shall document the~~
26 reason for this exception in the patient's medical record.

27 (4) A practitioner who writes a prescription to be dispensed by a pharmacy
28 located on federal property; ~~provided, however, that the practitioner~~



1 ~~documents~~ property. The practitioner, however, shall document the reason
2 for this exception in the patient's medical record.



3 (5) A person licensed to practice veterinary medicine pursuant to Article 11 of
4 ~~Chapter 90 of the General Statutes~~ this Chapter.

5 (a2) **(Effective January 1, 2020)** Verification by Dispenser Not Required. – A dispenser
6 is not required to verify that a practitioner properly falls under one of the exceptions specified
7 in subsection (a1) of this section prior to dispensing a targeted controlled substance. A
8 dispenser may continue to dispense targeted controlled substances from valid written, oral, or
9 facsimile prescriptions that are otherwise consistent with applicable laws.



10 (a3) **(Effective January 1, 2018)** Limitation on Prescriptions Upon Initial Consultation
11 for Acute Pain. – A practitioner ~~may~~ shall not prescribe more than a five-day supply of any
12 targeted controlled substance upon the initial consultation and treatment of a patient for acute
13 pain, unless the prescription is for post-operative acute pain relief for use immediately
14 following a surgical procedure. A practitioner shall not prescribe more than a seven-day supply
15 of any targeted controlled substance for post-operative acute pain relief immediately following
16 a surgical procedure. Upon any subsequent consultation for the same pain, the practitioner may
17 issue any appropriate renewal, refill, or new prescription for a targeted controlled substance.
18 This subsection does not apply to prescriptions for controlled substances issued by a
19 practitioner who orders a controlled substance to be wholly administered in a hospital, nursing
20 home licensed under Chapter 131E of the General Statutes, hospice facility, or residential care
21 facility, as defined in ~~G.S. 14-32.2(e1)~~ G.S. 14-32.2(i)(5). A practitioner who acts in
22 accordance with the limitation on prescriptions as set forth in this subsection ~~shall be~~ is
23 immune from any civil liability or disciplinary action from the practitioner's occupational
24 licensing agency for acting in accordance with this subsection.





25 (a4) **(Effective January 1, 2018)** Definitions. – As used in this subsection, the following
26 terms have the following meanings:

1 (1) Acute pain. – Pain, whether resulting from disease, accident, intentional
2 trauma, or other cause, that the practitioner reasonably expects to last for
3 three months or less. The term does not include chronic pain or pain being
4 treated as part of cancer care, hospice care, palliative care, or
5 medication-assisted treatment for substance use disorder.

6 (2) Chronic pain. – Pain that typically lasts for longer than three months or that
7 lasts beyond the time of normal tissue healing.

8 (3) Surgical procedure. – A procedure that is performed for the purpose of
9 structurally altering the human body by incision or destruction of tissues as
10 part of the practice of medicine. This term includes the diagnostic or
11 therapeutic treatment of conditions or disease processes by use of
12 instruments such as lasers, ultrasound, ionizing, radiation, scalpels, probes,
13 or needles that cause localized alteration or transportation of live human
14 tissue by cutting, burning, vaporizing, freezing, suturing, probing, or
15 manipulating by closed reduction for major dislocations and fractures, or
16 otherwise altering by any mechanical, thermal, light-based, electromagnetic,
17 or chemical means.

 18 (a5) Dispenser Immunity. – A dispenser ~~shall be~~ is immune from any civil or criminal
19 liability or disciplinary action from the Board of Pharmacy for dispensing a prescription written
20 by a prescriber in violation of this section.

21 (b) In emergency situations, as defined by rule of the Commission, Schedule II drugs
22 may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed
23 by the dispensing agent. Prescriptions shall be retained in conformity with the requirements of
 24 G.S. 90-104. No prescription for a Schedule II substance ~~may~~ shall be refilled.

25 (c) Except when dispensed directly by a practitioner, other than a pharmacist, to an
26 ultimate user, no controlled substance included in Schedules III or IV, except paregoric, U.S.P.,

1 as provided in ~~G.S. 90-91(e)1~~, may G.S. 90-91(e)1, shall be dispensed without a prescription,
2 and oral prescriptions shall be promptly reduced to writing and filed with the dispensing agent.

3 Such prescription ~~may~~ shall not be filled or refilled more than six months after the date thereof
4 or be refilled more than five times after the date of the prescription.

5 (d) No controlled substance included in Schedule V of this Article or paregoric, U.S.P.,
6 ~~may~~ shall be distributed or dispensed other than for a medical purpose.

7 (e) No controlled substance included in Schedule VI of this Article ~~may~~ shall be
8 distributed or dispensed other than for scientific or research purposes by persons registered
9 under, or permitted by, this Article to engage in scientific or research projects.

10 (f) No controlled substance shall be dispensed or distributed in this State unless such
11 substance ~~shall be~~ is in a container clearly labeled in accord with regulations lawfully adopted
12 and published by the federal government or the Commission.

13 (g) When a copy of a prescription for a controlled substance under this Article is given
14 as required by G.S. 90-70, such copy shall be plainly marked: "Copy – for information only."
15 Copies of prescriptions for controlled substances shall not be filled or refilled.

16 (h) A pharmacist dispensing a controlled substance under this Article shall enter the
17 date of dispensing on the prescription order pursuant to which such controlled substance was
18 dispensed.

19 (i) A manufacturer's sales representative may distribute a controlled substance as a
20 complimentary sample only upon the written request of a practitioner. Such request must be
21 made on each distribution and must contain the names and addresses of the supplier and the
22 requester and the name and quantity of the specific controlled substance requested. The
23 manufacturer shall maintain a record of each such request for a period of two years."

24 *[Staff Note: This amendment is a conforming amendment to the renumbering of the definitions*
25 *in G.S. 14-32.2.]*
26

1 **8.(a)**

2 **"§ 58-55-35. Facilities, services, and conditions defined.**

3 (a) Whenever long-term care insurance provides coverage for the facilities, services, or
4 physical or mental conditions listed below, unless otherwise defined in the policy and
5 certificate, and approved by the Commissioner, such facilities, services, or conditions are
6 defined as follows:

➡ 7 (1) "Adult care home" ~~shall be defined in accordance with the terms of~~ has the
8 same meaning as in G.S. 131D-2.1(3).

➡ 9 (1a) "Adult day care program" ~~shall be defined in accordance with the provisions~~
10 ~~of~~ has the same meaning as in G.S. 131D-6(b).

11 (2) "Chore" services include the performance of tasks incidental to activities of
12 daily living that do not require the services of a trained homemaker or other
13 specialist. Such services are provided to enable individuals to remain in their
14 own homes and may include such services as: assistance in meeting basic
15 care needs such as meal preparation; shopping for food and other necessities;
16 running necessary errands; providing transportation to essential service
17 facilities; care and cleaning of the house, grounds, clothing, and linens.

➡ 18 (3) "Combination home" ~~shall be defined in accordance with the terms of~~ has
19 the same meaning as in G.S. 131E-101(1a).

20 (4) Repealed by Session Laws 1995, c. 535, s. 3.

➡ 21 (5) "Family care home" ~~shall be defined in accordance with the terms of~~ has the
22 same meaning as in G.S. 131D-2.1(9).

23 (6) Renumbered.

24 (7) Repealed by Session Laws 1995, c. 535, s. 3.

➡ 25 (8) "Home health care services" ~~shall be defined in accordance with the terms of~~
26 has the same meaning as in G.S. 131E-136(3).

1 (9) "Homemaker services" means supportive services provided by qualified
2 para-professionals who are trained, equipped, assigned, and supervised by
3 professionals within the agency to help maintain, strengthen, and safeguard
4 the care of the elderly in their own homes. These standards must, at a
5 minimum, meet standards established by the North Carolina Division of
6 Social Services and may include: Providing assistance in management of
7 household budgets; planning nutritious meals; purchasing and preparing
8 foods; housekeeping duties; consumer education; and basic personal and
9 health care.

➡ 10 (10) "Hospice" ~~shall be defined in accordance with the terms of~~ has the same
11 meaning as in G.S. 131E-176(13a).

➡ 12 (11) "Intermediate care facility for ~~the mentally retarded~~" ~~shall be~~ individuals
13 with an intellectual disability" ~~defined in accordance with the terms of~~ has
14 the same meaning as in G.S. 131E-176(14a).

➡ 15 (12) "Nursing home" ~~shall be defined in accordance with the terms of~~ has the
16 same meaning as in G.S. 131E-101(6).

17 (13) "Respite care, institutional" means provision of temporary support to the
➡ 18 primary caregiver of the ~~aged, disabled, or handicapped~~ aged or disabled
19 individual by taking over the tasks of that person for a limited period of
20 time. The insured receives care for the respite period in an institutional
21 setting, such as a nursing home, family care home, rest home, or other
22 appropriate setting.

23 (14) "Respite care, non-institutional" means provision of temporary support to the
➡ 24 primary caregiver of the ~~aged, disabled, or handicapped~~ aged or disabled
25 individual by taking over the tasks of that person for a limited period of time
26 in the home of the insured or other appropriate community location.



(15) ~~"Skilled Nursing Facility" shall be defined in accordance with the terms of~~
~~G.S. 135-40.1(18). "Skilled nursing facility" means an institution licensed~~
~~under applicable State laws and primarily engaged in providing to inpatients,~~
~~under the supervision of a doctor and a registered professional nurse, skilled~~
~~nursing care and related services on a 24-hour basis, and rehabilitative~~
~~services.~~

(16) "Supervised living facility for developmentally disabled adults" means a
residential facility, as defined in G.S. 122C-3(14), which has two to nine
developmentally disabled adult residents.

(b) Whenever long-term care insurance provides coverage for organic brain disorder
syndrome, progressive dementing illness, or primary degenerative dementia, such phrases shall
be interpreted to include Alzheimer's Disease. Clinical diagnosis of "organic brain disorder
syndrome", "progressive dementing illness", and "primary degenerative dementia" must be
accepted as evidence that such conditions exist in an insured when a pathological diagnosis
cannot be made; provided that such medical evidence substantially documents the diagnosis of
the condition and the insured received treatment for such condition.

(c) All long-term care insurance policies must be filed with and approved by the
Commissioner before they can be used in this State and are subject to the provisions of Article
38 of this Chapter."

1 9.(f)

2 **"§ 108A-101. Definitions.**

3 ~~(a) The word "abuse" means the willful infliction of physical pain, injury or mental~~
4 ~~anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which~~
5 ~~are necessary to maintain mental and physical health.~~

6 ~~(b) The word "caretaker" shall mean an individual who has the responsibility for the~~
7 ~~care of the disabled adult as a result of family relationship or who has assumed the~~
8 ~~responsibility for the care of the disabled adult voluntarily or by contract.~~

9 ~~(c) The word "director" shall mean the director of the county department of social~~
10 ~~services in the county in which the person resides or is present, or his representative as~~
11 ~~authorized in G.S. 108A-14.~~

12 ~~(d) The words "disabled adult" shall mean any person 18 years of age or over or any~~
13 ~~lawfully emancipated minor who is present in the State of North Carolina and who is physically~~
14 ~~or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic~~
15 ~~brain damage caused by advanced age or other physical degeneration in connection therewith;~~
16 ~~or due to conditions incurred at any age which are the result of accident, organic brain damage,~~
17 ~~mental or physical illness, or continued consumption or absorption of substances.~~

18 ~~(e) A "disabled adult" shall be "in need of protective services" if that person, due to his~~
19 ~~physical or mental incapacity, is unable to perform or obtain for himself essential services and~~
20 ~~if that person is without able, responsible, and willing persons to perform or obtain for his~~
21 ~~essential services.~~

22 ~~(f) The words "district court" shall mean the judge of that court.~~

23 ~~(g) The word "emergency" refers to a situation where (i) the disabled adult is in~~
24 ~~substantial danger of death or irreparable harm if protective services are not provided~~
25 ~~immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or~~

~~willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108A-105.~~

~~(h) — The words "emergency services" refer to those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.~~

~~(i) — The words "essential services" shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-106 and in Chapter 122C of the General Statutes.~~

~~(j) — The word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.~~

~~(k) — The word "indigent" shall mean indigent as defined in G.S. 7A-450.~~

~~(l) — The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.~~

~~(m) — The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself or herself the services which are necessary to maintain the person's mental or physical health or is not receiving services from the person's caretaker. A person is~~

~~not receiving services from his caretaker if, among other things and not by way of limitation, the person is a resident of one of the State-owned psychiatric hospitals listed in G.S. 122C-181(a)(1), the State-owned Developmental Centers listed in G.S. 122C-181(a)(2), or the State-owned Neuro-Medical Treatment Centers listed in G.S. 122C-181(a)(3), the person is, in the opinion of the professional staff of that State-owned facility, mentally incompetent to give consent to medical treatment, the person has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and the person needs medical treatment.~~

~~(n) — The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult.~~

The following definitions apply in this Article:

(1) Abuse. – The willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.

(2) Caretaker. – An individual who has the responsibility for the care of the disabled adult as a result of a family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.

(3) Director. – The director of the county department of social services in the county in which the person resides or is present, or the director's representative as authorized in G.S. 108A-14.

(4) Disabled adult. – Any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to an intellectual disability, cerebral palsy, epilepsy, or autism; organic brain damage caused by advanced age or

1 other physical degeneration in connection therewith; or due to conditions
2 incurred at any age which are the result of accident, organic brain damage,
3 mental or physical illness, or continued consumption or absorption of
4 substances.

5 (5) Disabled adult in need of protective services. – A person who is unable to
6 perform or obtain for himself or herself essential services due to his or her
7 physical or mental incapacity and who is without able, responsible, and
8 willing persons to perform or obtain for him or her essential services.

9 (6) District court. – The judge of that court.

10 (7) Emergency. – Refers to a situation where (i) the disabled adult is in
11 substantial danger of death or irreparable harm if protective services are not
12 provided immediately, (ii) the disabled adult is unable to consent to services,
13 (iii) no responsible, able, or willing caretaker is available to consent to
14 emergency services, and (iv) there is insufficient time to utilize the
15 procedure provided in G.S. 108A-105.

16 (8) Emergency services. – Refers to those services necessary to maintain the
17 person's vital functions and without which there is reasonable belief that the
18 person would suffer irreparable harm or death. This term may include taking
19 physical custody of the disabled person.

20 (9) Essential services. – Refers to those social, medical, psychiatric,
21 psychological, or legal services necessary to safeguard the disabled adult's
22 rights and resources and to maintain the physical or mental well-being of the
23 individual. These services include the provision of medical care for physical
24 and mental health needs, assistance in personal hygiene, food, clothing,
25 adequately heated and ventilated shelter, protection from health and safety
26 hazards, protection from physical mistreatment, and protection from

1 exploitation. This term does not include taking the person into physical
2 custody without the person's consent except as provided in G.S. 108A-106
3 and Chapter 122C of the General Statutes.

4 (10) Exploitation. – The illegal or improper use of a disabled adult or a disabled
5 adult's resources for another's profit or advantage.

6 (11) Indigent. – As defined in G.S. 7A-450.

7 (12) Lacks the capacity to consent. – Lacks sufficient understanding or capacity
8 to make or communicate responsible decisions concerning his or her person,
9 including provisions for health or mental health care, food, clothing, or
10 shelter, because of physical or mental incapacity. This determination may be
11 reasonably determined by the director or the director may seek a physician's
12 or psychologist's assistance in making this determination.

13 (13) Neglect. – Refers to a disabled adult who is either living alone and not able
14 to provide for himself or herself the services which are necessary to maintain
15 the person's mental or physical health or is not receiving services from the
16 person's caretaker. A person is not receiving services from his or her
17 caretaker if, among other things and not by way of limitation, the person is a
18 resident of one of the State-owned psychiatric hospitals listed in G.S. 122C-
19 181(a)(1), the State-owned developmental centers listed in G.S. 122C-
20 181(a)(2), or the State-owned neuro-medical treatment centers listed in G.S.
21 122C-181(a)(3), the person is, in the opinion of the professional staff of that
22 State-owned facility, mentally incompetent to give consent to medical
23 treatment, the person has no legal guardian appointed pursuant to Chapter
24 35A of the General Statutes or guardian as defined in G.S. 122C-3(15), and
25 the person needs medical treatment.

1 (14) Protective services. – Services provided by the State or other government or
2 private organizations or individuals which are necessary to protect the
3 disabled adult from abuse, neglect, or exploitation. They consist of
4 evaluation of the need for service and mobilization of essential services on
5 behalf of the disabled adult."

1 **9.(g)**

2 **"§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.**

3 (a) Abuse. – A person is guilty of abuse if that person is a caretaker of a disabled or
4 elder adult who is residing in a domestic setting and, with malice aforethought, knowingly and
5 willfully: (i) assaults, (ii) fails to provide medical or hygienic care, or (iii) confines or restrains
6 the disabled or elder adult in a place or under a condition that is cruel or unsafe, and as a result
7 of the act or failure to act the disabled or elder adult suffers mental or physical injury.

8 If the disabled or elder adult suffers serious injury from the abuse, the caretaker is guilty of
9 a Class F felony. If the disabled or elder adult suffers injury from the abuse, the caretaker is
10 guilty of a Class H felony.

11 A person is not guilty of an offense under this subsection if the act or failure to act is in
12 accordance with G.S. 90-321 or G.S. 90-322.

13 (b) Neglect. – A person is guilty of neglect if that person is a caretaker of a disabled or
14 elder adult who is residing in a domestic setting and, wantonly, recklessly, or with gross
15 carelessness: (i) fails to provide medical or hygienic care, or (ii) confines or restrains the
16 disabled or elder adult in a place or under a condition that is unsafe, and as a result of the act or
17 failure to act the disabled or elder adult suffers mental or physical injury.

18 If the disabled or elder adult suffers serious injury from the neglect, the caretaker is guilty
19 of a Class G felony. If the disabled or elder adult suffers injury from the neglect, the caretaker
20 is guilty of a Class I felony.

21 A person is not guilty of an offense under this subsection if the act or failure to act is in
22 accordance with G.S. 90-321 or G.S. 90-322.

23 (c) Repealed by Session Laws 2005-272, s. 1, effective December 1, 2005, and
24 applicable to offenses committed on or after that date.

25 (d) Definitions. – The following definitions apply in this section:

1 (1) Caretaker. – A person who has the responsibility for the care of a disabled or
2 elder adult as a result of a family relationship or who has assumed the
3 responsibility for the care of a disabled or elder adult voluntarily or by
4 contract.

5 (2) Disabled adult. – A person 18 years of age or older or a lawfully
6 emancipated minor who is present in the State of North Carolina and who is
7 physically or mentally incapacitated as defined in ~~G.S. 108A-101(d)~~ G.S.
8 108A-101(4).

9 (3) Domestic setting. – Residence in any residential setting except for a health
10 care facility or residential care facility as these terms are defined in G.S.
11 14-32.2.

12 (4) Elder adult. – A person 60 years of age or older who is not able to provide
13 for the social, medical, psychiatric, psychological, financial, or legal services
14 necessary to safeguard the person's rights and resources and to maintain the
15 person's physical and mental well-being."

16 *[Staff Note: This draft makes a conforming change to the rewriting of G.S. 108A-101.]*
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1 **9.(h)**

2 **"§ 14-112.2. Exploitation of an older adult or disabled adult.**

3 (a) The following definitions apply in this section:

4 (1) Disabled adult. – A person 18 years of age or older or a lawfully
5 emancipated minor who is present in the State of North Carolina and who is
6 physically or mentally incapacitated as defined in ~~G.S. 108A-101(d)~~G.S.
7 108A-101(4).

8 (2) Older adult. – A person 65 years of age or older.

9 (b) It is unlawful for a person: (i) who stands in a position of trust and confidence with
10 an older adult or disabled adult, or (ii) who has a business relationship with an older adult or
11 disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain
12 or use, an older adult's or disabled adult's funds, assets, or property with the intent to
13 temporarily or permanently deprive the older adult or disabled adult of the use, benefit, or
14 possession of the funds, assets, or property, or to benefit someone other than the older adult or
15 disabled adult.

16 (c) It is unlawful for a person to knowingly, by deception or intimidation, obtain or use,
17 endeavor to obtain or use, or conspire with another to obtain or use an older adult's or disabled
18 adult's funds, assets, or property with the intent to temporarily or permanently deprive the older
19 adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or
20 benefit someone other than the older adult or disabled adult. This subsection ~~shall~~does not
21 apply to a person acting within the scope of that person's lawful authority as the agent for the
22 older adult or disabled adult.

23 (d) A violation of subsection (b) of this section is punishable as follows:

24 (1) If the funds, assets, or property involved in the exploitation of the older adult
25 or disabled adult is valued at one hundred thousand dollars (\$100,000) or
26 more, then the offense is a Class F felony.

1 (2) If the funds, assets, or property involved in the exploitation of the older adult
2 or disabled adult is valued at twenty thousand dollars (\$20,000) or more but
3 less than one hundred thousand dollars (\$100,000), then the offense is a
4 Class G felony.

5 (3) If the funds, assets, or property involved in the exploitation of the older adult
6 or disabled adult is valued at less than twenty thousand dollars (\$20,000),
7 then the offense is a Class H felony.

8 (e) A violation of subsection (c) of this section is punishable as follows:

9 (1) If the funds, assets, or property involved in the exploitation of the older adult
10 or disabled adult is valued at one hundred thousand dollars (\$100,000) or
11 more, then the offense is a Class G felony.

12 (2) If the funds, assets, or property involved in the exploitation of the older adult
13 or disabled adult is valued at twenty thousand dollars (\$20,000) or more but
14 less than one hundred thousand dollars (\$100,000), then the offense is a
15 Class H felony.

16 (3) If the funds, assets, or property involved in the exploitation of the older adult
17 or disabled adult is valued at less than twenty thousand dollars (\$20,000),
18 then the offense is a Class I felony.

19 (f) If a person is charged with a violation of this section that involves funds, assets, or
20 property valued at more than five thousand dollars (\$5,000), the district attorney may file a
21 petition in the pending criminal proceeding before the court with jurisdiction over the pending
22 charges to freeze the funds, assets, or property of the defendant in an amount up to one hundred
23 fifty percent (150%) of the alleged value of funds, assets, or property in the defendant's pending
24 criminal proceeding for purposes of restitution to the victim. The standard of proof required to
25 freeze the defendant's funds, assets, or property shall be by clear and convincing evidence. The



1 procedure for petitioning the court under this subsection ~~shall be~~ is governed by G.S.
2 14-112.3."

3 *[Staff Note: This draft makes a conforming change to the rewriting of G.S. 108A-101.]*

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1 **9.(i)**

2 **"§ 14-196.3. Cyberstalking.**

3 (a) The following definitions apply in this section:

4 (1) Electronic communication. – Any transfer of signs, signals, writing, images,
5 sounds, data, or intelligence of any nature, transmitted in whole or in part by
6 a wire, radio, computer, electromagnetic, photoelectric, or photo-optical
7 system.

8 (2) Electronic mail. – The transmission of information or communication by the
9 use of the Internet, a computer, a facsimile machine, a pager, a cellular
10 telephone, a video recorder, or other electronic means sent to a person
11 identified by a unique address or address number and received by that
12 person.

13 (3) Electronic tracking device. – An electronic or mechanical device that
14 permits a person to remotely determine or track the position and movement
15 of another person.

16 (4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned
17 by a single entity and operated by employees or agents of the entity for
18 business or government purposes, (ii) motor vehicles held for lease or rental
19 to the general public, or (iii) motor vehicles held for sale, or used as
20 demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

21 (b) It is unlawful for a person to:

22 (1) Use in electronic mail or electronic communication any words or language
23 threatening to inflict bodily harm to any person or to that person's child,
24 sibling, spouse, or dependent, or physical injury to the property of any
25 person, or for the purpose of extorting money or other things of value from
26 any person.

- 1 (2) Electronically mail or electronically communicate to another repeatedly,
2 whether or not conversation ensues, for the purpose of abusing, annoying,
3 threatening, terrifying, harassing, or embarrassing any person.
- 4 (3) Electronically mail or electronically communicate to another and to
5 knowingly make any false statement concerning death, injury, illness,
6 disfigurement, indecent conduct, or criminal conduct of the person
7 electronically mailed or of any member of the person's family or household
8 with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
- 9 (4) Knowingly permit an electronic communication device under the person's
10 control to be used for any purpose prohibited by this section.
- 11 (5) Knowingly install, place, or use an electronic tracking device without
12 consent, or cause an electronic tracking device to be installed, placed, or
13 used without consent, to track the location of any person. The provisions of
14 this subdivision do not apply to the installation, placement, or use of an
15 electronic tracking device by any of the following:
- 16 a. A law enforcement officer, judicial officer, probation or parole
17 officer, or employee of the Division of Corrections, Department of
18 Public Safety, when any such person is engaged in the lawful
19 performance of official duties and in accordance with State or federal
20 law.
- 21 b. The owner or lessee of any vehicle on which the owner or lessee
22 installs, places, or uses an electronic tracking device, unless the
23 owner or lessee is subject to (i) a domestic violence protective order
24 under Chapter 50B of the General Statutes or (ii) any court order that
25 orders the owner or lessee not to assault, threaten, harass, follow, or
26 contact a driver or occupant of the vehicle.



- 1 c. A legal guardian for a disabled adult, as defined in ~~G.S.~~
2 ~~108A-101(d)~~, G.S. 108A-101(4), or a legally authorized individual or
3 organization designated to provide protective services to a disabled
4 adult pursuant to G.S. 108A-105(c), when the electronic tracking
5 device is installed, placed, or used to track the location of the
6 disabled adult for which the person is a legal guardian or the
7 individual or organization is designated to provide protective
8 services.
- 9 d. The owner of fleet vehicles, when tracking such vehicles.
- 10 e. A creditor or other secured party under a retail installment agreement
11 involving the sale of a motor vehicle or the lessor under a retail lease
12 of a motor vehicle, and any assignee or successor in interest to that
13 creditor, secured party, or lessor, when tracking a motor vehicle
14 identified as security under the retail installment sales agreement or
15 leased pursuant to a retail lease agreement, including the installation,
16 placement, or use of an electronic tracking device to locate and
17 remotely disable the motor vehicle, with the express written consent
18 of the purchaser, borrower, or lessee of the motor vehicle.
- 19 f. The installation, placement, or use of an electronic tracking device
20 authorized by an order of a State or federal court.
- 21 g. A motor vehicle manufacturer, its subsidiary, or its affiliate that
22 installs or uses an electronic tracking device in conjunction with
23 providing a vehicle subscription telematics service, provided that the
24 customer subscribes or consents to that service.
- 25 h. A parent or legal guardian of a minor when the electronic tracking
26 device is installed, placed, or used to track the location of that minor

1 unless the parent or legal guardian is subject to a domestic violence
2 protective order under Chapter 50B of the General Statutes or any
3 court order that orders the parent or legal guardian not to assault,
4 threaten, harass, follow, or contact that minor or that minor's parent,
5 legal guardian, custodian, or caretaker as defined in G.S. 7B-101.

6 i. An employer, when providing a communication device to an
7 employee or contractor for use in connection with his or her work for
8 the employer.

9 j. A business, if the tracking is incident to the provision of a product or
10 service requested by the person, except as limited in sub-subdivision
11 k. of this subdivision.

12 k. A private detective or private investigator licensed under Chapter
13 74C of the General Statutes, provided that (i) the tracking is pursuant
14 to authority under G.S. 74C-3(a)(8), (ii) the tracking is not otherwise
15 contrary to law, and (iii) the person being tracked is not under the
16 protection of a domestic violence protective order under Chapter 50B
17 of the General Statutes or any other court order that protects against
18 assault, threat, harassment, following, or contact.

19 (c) Any offense under this section committed by the use of electronic mail or electronic
20 communication may be deemed to have been committed where the electronic mail or electronic
21 communication was originally sent, originally received in this State, or first viewed by any
22 person in this State.

➡ 23 (d) Any person violating the provisions of this section ~~shall be~~ is guilty of a Class 2
24 misdemeanor.

25 (e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity
26 intended to express political views or to provide lawful information to others. This section shall

1 not be construed to impair any constitutionally protected activity, including speech, protest, or
2 assembly."

3 *[Staff Note: This draft makes a conforming change to the rewriting of G.S. 108A-101.]*

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1 9.(j)

2 "§ 108A-103. Duty of director upon receiving report.

3 (a) Any director receiving a report that a disabled adult is in need of protective services
4 shall make a prompt and thorough evaluation to determine whether the disabled adult is in need
5 of protective services and what services are needed. The evaluation shall include a visit to the
6 person and consultation with others having knowledge of the facts of the particular case. When
7 necessary for a complete evaluation of the report, the director ~~shall have~~ has the authority to
8 review and copy any and all records, or any part of ~~such~~ the records, related to the care and
9 treatment of the disabled adult that have been maintained by any individual, ~~facility~~ facility, or
10 agency acting as a caretaker for the disabled adult. This shall include but not be limited to
11 records maintained by facilities licensed by the North Carolina Department of Health and
12 Human Services. Use of information so obtained ~~shall be~~ is subject to and governed by the
13 provisions of G.S. 108A-80 and Article 3 of Chapter 122C of the General Statutes. The director
14 ~~shall have~~ has the authority to conduct an interview with the disabled adult with no other
15 persons present. After completing the evaluation the director shall make a written report of the
16 case indicating whether ~~he~~ the director believes protective services are needed and shall notify
17 the individual making the report of ~~his~~ the director's determination as to whether the disabled
18 adult needs protective services.

19 (b) The staff and physicians of local health departments, area mental health,
20 developmental disabilities, and substance abuse authorities, and other public or private agencies
21 shall cooperate fully with the director in the performance of ~~his~~ the director's duties. These
22 duties include immediate accessible evaluations and in-home evaluations where the director
23 deems this necessary.

24 (c) The director may contract with an agency or private physician for the purpose of
25 providing immediate accessible medical evaluations in the location that the director deems
26 most appropriate.

(d) The director shall initiate the evaluation described in subsection (a) of this section as follows:

(1) Immediately upon receipt of the complaint if the complaint alleges a danger of death in an emergency as defined in ~~G.S. 108A-101(g)~~G.S. 108A-101(7).

(2) Within 24 hours if the complaint alleges danger of irreparable harm in an emergency as defined by ~~G.S. 108A-101(g)~~G.S. 108A-101(7).

(3) Within 72 hours if the complaint does not allege danger of death or irreparable harm in an emergency as defined by ~~G.S. 108A-101(g)~~G.S. 108A-101(7).

(4) Repealed by Session Laws 2000, c. 131, s. 1.

The evaluation shall be completed within 30 days for allegations of abuse or neglect and within 45 days for allegations of exploitation."

[Staff Note: This draft makes conforming changes to the rewriting of G.S. 108A-101.]

1 **9.(k)**

2 **"§ 108A-113. Definitions.**

3 As used in this Article, the following definitions apply:

- 4 (1) Customer. – A person who is a present or former holder of an account with a
5 financial institution.
- 6 (2) Disabled adult. – An individual 18 years of age or older or a lawfully
7 emancipated minor who is present in the State of North Carolina and who is
8 physically or mentally incapacitated as defined in ~~G.S. 108A-101(d)~~G.S.
9 108A-101(4).
- 10 (3) Financial exploitation. – The illegal or improper use of a disabled adult's or
11 older adult's financial resources for another's profit or pecuniary advantage.
- 12 (4) Financial institution. – A banking corporation, trust company, savings and
13 loan association, credit union, or other entity principally engaged in lending
14 money or receiving or soliciting money on deposit.
- 15 (5) Financial record. – An original of, a copy of, or information derived from a
16 record held by a financial institution pertaining to a customer's relationship
17 with the financial institution and identified with or identifiable with the
18 customer.
- 19 (6) Investigating entity. – A law enforcement agency investigating alleged
20 financial exploitation of a disabled adult or an older adult, or a county
21 department of social services investigating alleged financial exploitation of a
22 disabled adult.
- 23 (7) Law enforcement agency. – Any duly accredited State or local government
24 agency possessing authority to enforce the criminal statutes of North
25 Carolina.
- 26 (8) Older adult. – An individual 65 years of age or older.

- 1 (9) Promptly. – As soon as practicable, with reasonable allowance to be made
2 for the time required to retrieve older data or records that are not readily or
3 immediately retrievable due to their current storage media."

4 *[Staff Note: This draft makes a conforming change to the rewriting of G.S. 108A-101.]*